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c 375 Personal Property Security Act

Ontario

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CHAPTER 375

Personal Property Security Act

1. In this Act,

Interpre-
tation

- (a) "accessions" means goods that are installed in or affixed to other goods;
- (b) "account debtor" means a person who is obligated on chattel paper or on an intangible;
- (c) "chattel paper" means one or more than one writing that expresses both a monetary obligation and a security interest in specific goods;
- (d) "collateral" means property that is subject to a security interest;
- (e) "consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes;
- (f) "creditor" includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, and an executor, administrator or committee;
- (g) "debtor" means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes an assignor of book debts and an assignee of the debtor's interest in the collateral referred to in subsection 49 (1), or such one or more of them as the context requires;
- (h) "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;
- (i) "document of title" means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is

treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

- (j) "equipment" means goods that are not inventory or consumer goods;
- (k) "goods" means all chattels personal; other than choses in action and money, and includes emblements and industrial growing crops, and oil, gas and other minerals to be extracted, and timber to be cut, and goods are either consumer goods, equipment or inventory;
- (l) "instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include a writing that constitutes part of chattel paper, a document of title or securities;
- (m) "intangible" means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments or securities;
- (n) "inventory" means goods that are held by a person for sale or lease, or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;
- (o) "judge" means a judge of a county or district court;
- (p) "notify" means to take such steps as are reasonably required to give information to the person to be notified so that,

- (i) it comes to his attention, or

- (ii) it is directed to such person at his customary address or at his place of residence, or at such other place as is designated by him over his signature,

and "notification" has a corresponding meaning;

- (q) "prescribed" means prescribed by the regulations;

- (r) "proceeds" means personal property in any form or fixtures derived directly or indirectly from any dealing with collateral or proceeds or that indemnifies or compensates for collateral destroyed or damaged;
- (s) "purchase-money security interest" means a security interest that is,
 - (i) taken or reserved by the seller of the collateral to secure payment of all or part of its price, or
 - (ii) taken by a person who gives value that enables the debtor to acquire rights in or the use of the collateral, if such value is applied to acquire such rights;
- (t) "registrar" means the registrar of personal property security;
- (u) "regulations" means the regulations made under this Act;
- (v) "secured party" means a person who has a security interest;
- (w) "securities" means shares, stock, warrants, bonds, debentures, debenture stock or the like issued by a corporation or other person, or a partnership, association or government;
- (x) "security agreement" means an agreement that creates or provides for a security interest;
- (y) "security interest" means an interest in goods, other than building materials that have been affixed to the realty, fixtures, documents of title, instruments, securities, chattel papers or intangibles that secures payment or performance of an obligation, and includes an interest arising from an assignment of book debts;
- (z) "value" means any consideration sufficient to support a simple contract. R.S.O. 1970, c. 344, s. 1.

PART I

GENERAL

2. Subject to subsection 3 (1), this Act applies,

Application
of Act

(a) to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,

(i) a chattel mortgage, conditional sale, equipment trust, floating charge, pledge, trust deed or trust receipt, and

(ii) an assignment, lease or consignment intended as security; and

(b) to every assignment of book debts not intended as security, but not to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies. R.S.O. 1970, c. 344, s. 2.

R.S.O. 1980,
c. 33

Where Act
does not
apply

3.—(1) This Act does not apply,

(a) to a lien given by statute or rule of law, except as provided in section 32, clause 36 (3) (b) and clause 37 (2) (b);

(b) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

(c) to a mortgage, charge or assignment whose registration is provided for in the *Corporations Securities Registration Act*; or

R.S.O. 1980,
c. 94

(d) to a transaction under the *Pawnbrokers Act*.

R.S.O. 1980,
c. 372

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. R.S.O. 1970, c. 344, s. 3.

Rights
under
R.S.O. 1980,
c. 462 not
affected

Errors,
omissions,
etc.

4. A document to which this Act applies is not invalidated nor shall its effect be destroyed by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless, in the opinion of the judge or court, the defect, irregularity, omission or error is shown to have actually misled some person whose interests are affected by the document. R.S.O. 1970, c. 344, s. 4.

Conflict
of laws

5.—(1) Where the chief place of business of a debtor is in Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles or with regard to goods of a type that are normally used in more than one jurisdiction, if such

goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by this Act.

(2) Where the chief place of business of a debtor is not in Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles or with regard to goods of a type that are normally used in more than one jurisdiction, if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by the law, including the conflict of laws rules, of the jurisdiction in which the chief place of business is located. ^{Idem}

(3) If a jurisdiction does not provide, by registration or recording in such jurisdiction, for perfection of a security interest of the kind referred to in subsections (1) and (2), the security interest may be perfected by registration in Ontario. R.S.O. 1970, c. 344, s. 5. ^{Idem}

6.—(1) Where personal property, other than that governed by subsection 5 (1) or (2), was already subject to a security interest when it was brought into Ontario, the validity of the security interest in Ontario is to be determined by the law, including the conflict of laws rules, of the jurisdiction where the property was when the security interest attached. R.S.O. 1970, c. 344, s. 6 (1). ^{Conflict of laws, continued}

(2) Where goods brought into Ontario are subject to the seller's right to revendicate or to resume possession of the goods, unless the seller registers a financing statement in the prescribed form within twenty days after the day on which the goods were brought into Ontario, such right is unenforceable in Ontario thereafter. R.S.O. 1970, c. 344, s. 6 (2); 1973, c. 102, s. 1. ^{Right of revendication}

7.—(1) Subject to section 5, a security interest in collateral already perfected under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into Ontario continues perfected in Ontario for sixty days and also thereafter if within the sixty-day period it is perfected in Ontario. R.S.O. 1970, c. 344, s. 7 (1). ^{Conflict of laws, continued}

(2) Notwithstanding subsection (1), where the secured party receives notice within the sixty-day period mentioned therein that the collateral has been brought into Ontario, his security interest in the collateral ceases to be perfected in Ontario unless he registers a financing statement in the pre- ^{Idem}

scribed form within fifteen days from the date that he receives such notice or upon the expiration of the sixty-day period, whichever is earlier. R.S.O. 1970, c. 344, s. 7 (2); 1973, c. 102, s. 2.

Idem

(3) A security interest that has ceased to be perfected in Ontario due to the expiration of the sixty-day period may thereafter be perfected in Ontario, but such perfection takes effect from the time of its perfection in Ontario. R.S.O. 1970, c. 344, s. 7 (3).

Conflict of laws, concluded

8. Where a security interest was not perfected under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into Ontario, it may be perfected in Ontario within thirty days from the date the collateral is brought into Ontario, in which case perfection dates from the time of perfection in Ontario. R.S.O. 1970, c. 344, s. 8.

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness of security agreement

9. Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. R.S.O. 1970, c. 344, s. 9.

Enforceability of security interest

10. A security interest is not enforceable by or against a third party unless,

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement that contains a description of the collateral and, if the collateral is or includes fixtures or crops, or oil, gas or other minerals to be extracted, or timber to be cut, identification of the land concerned. R.S.O. 1970, c. 344, s. 10; 1973, c. 102, s. 3.

Delivery of copy of agreement

11. Where a security interest is created or provided for by a security agreement, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if he fails to do so after a request by the debtor, a judge may on summary application by the debtor make an order for the delivery of such a copy to the debtor and may make such order as to costs as he considers just. R.S.O. 1970, c. 344, s. 11.

12.—(1) A security interest attaches when,

When
security
interest
attaches

- (a) the parties intend it to attach;
- (b) value is given; and
- (c) the debtor has rights in the collateral.

(2) For the purpose of subsection (1), the debtor has no **Idem** rights in,

- (a) crops until they become growing crops;
- (b) fish until they are caught;
- (c) oil, gas or other minerals until they are extracted;
or
- (d) timber until it is cut. R.S.O. 1970, c. 344, s. 12.

13.—(1) Except as provided in subsection (2), a security agreement may cover after-acquired property and the young **After-acquired property, etc.** of animals after conception.

(2) No security interest attaches under an after-acquired **Exception** property clause in a security agreement,

- (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value. R.S.O. 1970, c. 344, s. 13.

14. A purchase-money security interest in consumer goods **Limitation on coverage** does not attach to any collateral other than such consumer goods. R.S.O. 1970, c. 344, s. 14.

15. A security agreement may secure future advances or other value whether or not the advances or other value are given pursuant to commitment. R.S.O. 1970, c. 344, s. 15. **Future advances**

16. Except as to consumer goods, an agreement by a debtor not to assert against an assignee any claim or defence that he has against his seller or lessor is enforceable by the **Agreement not to assert defence against assignee**

assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against the holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada). R.S.O. 1970, c. 344, s. 16.

R.S.C. 1970,
c. B-5

Seller's
warranties

17. Where a seller retains a purchase-money security interest in goods,

R.S.O. 1980,
c. 462

(a) the *Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and

(b) except as provided in section 16, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1970, c. 344, s. 17.

Provision to
accelerate

18. Where a security agreement provides that the secured party may accelerate payment or performance when he considers himself insecure, such provision shall be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired. R.S.O. 1970, c. 344, s. 18.

Care of
collateral

19.—(1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties.

Idem.
rights and
duties of
secured
party

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral;

(b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;

(c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the secured obligation; .

(d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss or damage caused by his failure to meet any obligations imposed by subsection (1) or (2), but does not lose his security interest. Liability
for loss

(4) A secured party may use the collateral, Use of
collateral

(a) in the manner and to the extent provided in the security agreement;

(b) for the purpose of preserving the collateral or its value; or

(c) pursuant to an order of,

(i) the court before which a question relating thereto is being heard, or

(ii) a judge upon application by originating notice to all persons concerned.

(5) A secured party, Idem

(a) is liable for any loss or damage caused by his use of the collateral otherwise than as authorized by subsection (4); and

(b) is subject to being ordered or restrained as provided in subsection 63 (1). R.S.O. 1970, c. 344, s. 19.

20.—(1) A debtor or a person having an interest in the collateral or an execution creditor may, by a notice in writing, require the secured party to furnish to him any one or more of, Statements
of account

(a) a statement in writing of the amount of the indebtedness and of the terms of payment thereof as of the date specified in the notice;

(b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice;

(c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof; or

(d) a true copy of the security agreement. 1973, c. 102, s. 4 (1).

Idem

(2) In the case of clause (1) (b), if the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he may so indicate in lieu of approving or correcting the itemized list of such collateral contained in the statement of the collateral and attached to the notice. R.S.O. 1970, c. 344, s. 20 (2).

Time for compliance with notice, liability for failure to answer

(3) Subject to payment of any fee required pursuant to subsection (6), the secured party shall answer a notice given under subsection (1) within fifteen days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person. R.S.O. 1970, c. 344, s. 20 (3); 1973, c. 102, s. 4 (2).

Successors in interest

(4) Where the person receiving a notice under subsection (1) no longer has an interest in the obligation or collateral, he shall, within fifteen days after he receives the notice, disclose the name and address of the latest successor in interest known to him, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

Idem

(5) A successor in interest shall be deemed to be the secured party for the purposes of this section when he receives a notice under subsection (1). R.S.O. 1970, c. 344, s. 20 (4, 5).

Fee

(6) The secured party may require payment to him of a fee of \$2 for each statement or copy of the security agreement required pursuant to subsection (1), but the debtor is entitled to a statement without charge once in every six months. 1973, c. 102, s. 4 (3).

PART III

PERFECTION OF INTEREST

Time when perfected

21. A security interest is perfected when,

(a) it has attached; and

- (b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence. R.S.O. 1970, c. 344, s. 21.

22.—(1) Except as provided in subsection (3), an unperfected security interest is subordinate to,

Where
unperfected
security
interest
subordinate

- (a) the interest of a person,

(i) who is entitled to a priority under this or any other Act, or

(ii) who, without knowledge of the security interest and before it is perfected, assumes control of the collateral through legal process, or

(iii) who represents the creditors of the debtor as assignee for the benefit of creditors, trustee in bankruptcy or receiver; and

- (b) the interest of a transferee who is not a secured party to the extent that he gives value without knowledge of the security interest and before it is perfected,

(i) of chattel paper, documents of title, securities, instruments or goods in bulk or otherwise, not in the ordinary course of the business of the transferor and where the transferee receives delivery of the collateral, or

(ii) of intangibles.

(2) The rights of a person under subclause (1) (a) (iii) in respect of the collateral are referable to the date from which his status has effect and arise without regard to the personal knowledge of the representative if any represented creditor was, on the relevant date, without knowledge of the unperfected security interest. Idem

(3) A purchase-money security interest that is registered before or within ten days after the debtor's possession of the collateral commences has priority over,

Purchase-
money
security
interest

- (a) an interest set out in subclause (1) (a) (ii) or (iii); and

- (b) transfers in bulk or otherwise, not in the ordinary course of business, occurring between the security interest's attaching and its being registered. R.S.O. 1970, c. 344, s. 22.

Continuity
of perfection

23.—(1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment. R.S.O. 1970, c. 344, s. 23.

Perfection
by possession

24. Except as provided in section 26, possession of the collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) letters of credit and advices of credit; or
- (f) negotiable documents of title,

but subject to section 23, only during its actual holding as collateral. R.S.O. 1970, c. 344, s. 24.

Perfection
by
registration

25.—(1) Subject to section 21, registration perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) intangibles; or
- (d) documents of title.

Idem

(2) A security interest is not perfected until it is registered, except in the case of a security interest,

- (a) in collateral in possession of the secured party under section 24; or

- (b) temporarily perfected in instruments, securities or negotiable documents of title under section 26. R.S.O. 1970, c. 344, s. 25.

26.—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value given under a security agreement signed by the debtor and the secured party. R.S.O. 1970, c. 344, s. 26 (1); 1973, c. 102, s. 5. Temporary perfection

(2) A perfected security interest in, Idem

- (a) an instrument that a secured party delivers to the debtor for the purpose of,

- (i) ultimate sale or exchange,
- (ii) presentation, collection or renewal, or
- (iii) registration of transfer; or

- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,

- (i) ultimate sale or exchange,
- (ii) loading, unloading, storing, shipping or transshipping, or
- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor.

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest. R.S.O. 1970, c. 344, s. 26 (2, 3). Idem

27.—(1) Subject to this Act, a security interest in collateral that is dealt with so as to give rise to proceeds, Perfecting as to proceeds

- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized such dealing; and

(b) extends to the proceeds. R.S.O. 1970, c. 344, s. 27 (1).

Idem

(2) The security interest in proceeds is a perfected security interest if the security interest in the collateral is perfected but it ceases to be a perfected security interest and becomes unperfected after ten days after receipt of the proceeds by the debtor unless,

(a) a financing statement in the prescribed form in respect of the collateral is registered; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period,

but there is no perfected security interest in proceeds that are not identifiable or traceable. 1973, c. 102, s. 6.

Perfecting
as to goods
held by
bailee

28.—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto.

Idem

(2) A security interest in goods in the possession of a bailee, other than a bailee mentioned in subsection (1), is perfected by,

(a) issuance of a document of title in the name of the secured party;

(b) a holding on behalf of the secured party pursuant to section 24; or

(c) registration as to the goods. R.S.O. 1970, c. 344, s. 28.

Goods
returned or
repossessed

29.—(1) A security interest in goods that are the subject of a sale or exchange and that are returned to, or repossessed by,

(a) the person who sold or exchanged them; or

(b) a transferee of an intangible or chattel paper resulting from the sale of them,

reattaches to the extent that the secured indebtedness remains unpaid.

Idem

(2) Where the security interest was perfected by a registration that is still effective at the time of the sale or

exchange, it reattaches as a perfected interest, but otherwise requires for its perfection a registration or a taking of possession by the secured party.

(3) A transferee of,

Transferees

(a) an intangible resulting from a sale; or

(b) except as otherwise provided in section 30, chattel paper resulting from a sale,

has, as against the transferor, a security interest that is,

(c) subordinate to a security interest under subsection (1) that was a perfected interest when the goods became the subject of the sale or exchange; and

(d) otherwise subject to section 35.

(4) A transferee of an intangible or chattel paper resulting from a sale is, with respect to persons asserting interests in the goods under provisions other than subsections (1), (2) and (3), subject to the provisions of this Act for perfecting a security interest. R.S.O. 1970, c. 344, s. 29.

30.—(1) A purchaser of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by his seller even though it is perfected and the purchaser actually knows of it.

Effect of perfection on purchasers of goods in ordinary course of business

(2) A purchaser of chattel paper who takes possession of it in the ordinary course of his business has, to the extent that he gives new value, priority over any other security interest in it,

Idem, purchasers of chattel paper

(a) that was perfected under section 25 if he did not actually know at the time he took possession that the chattel paper was subject to a security interest; or

(b) that has attached to proceeds of inventory under section 27, whatever the extent of his knowledge.

(3) A purchaser of a non-negotiable instrument who takes possession of it in the ordinary course of his business has priority to the extent that he gives new value over a security interest in it that was perfected under section 26 if he did not actually know at the time he took possession that the instrument was subject to a security interest. R.S.O. 1970, c. 344, s. 30.

Idem, purchasers of non-negotiable instruments

Bona fide purchasers of negotiable instruments, etc.

R.S.O. 1970, c. B 5

31. (1) The rights of,

- (a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada);
- (b) a holder of a negotiable document of title who takes it in good faith for value; or
- (c) a *bona fide* purchaser of securities,

are to be determined without regard to this Act.

Idem

(2) Registration under this Act is not such notice as to affect the rights of persons mentioned in subsection (1). R.S.O. 1970, c. 344, s. 31.

Priority of liens for materials and services

32. Where a person in the ordinary course of business furnishes materials or services with respect to goods in his possession that are subject to a security interest, any lien that he has in respect of such materials or services has priority over a perfected security interest unless the lien is given by an Act that does not provide that the lien has such priority. R.S.O. 1970, c. 344, s. 32.

Alienation of rights of debtors

33. The rights of a debtor in collateral may be transferred voluntarily or involuntarily notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise. R.S.O. 1970, c. 344, s. 33.

Special priorities, crops

34.—(1) A perfected security interest in crops or their proceeds given for a consideration to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise has priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving the consideration knew of the earlier security interest. R.S.O. 1970, c. 344, s. 34 (1).

Idem, purchase-money security interests, inventory

(2) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral,

- (a) if the purchase-money security interest was perfected at the time the debtor received possession of the collateral; and

- (b) if any secured party, whose security interest was actually known to the holder of the purchase-money security interest or who, prior to the registration by the holder of the purchase-money security interest, had registered a financing statement in the prescribed form covering the same items or type of inventory, had received notification of the purchase-money security interest before the debtor received possession of the collateral covered by the purchase-money security interest; and
- (c) if such notification states that the person giving the notice had or expected to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type. R.S.O. 1970, c. 344, s. 34 (2); 1973, c. 102, s. 7.

(3) A purchase-money security interest in collateral or its proceeds, other than inventory, has priority over any other security interest in the same collateral if the purchase-money security interest was perfected at the time the debtor obtained possession of the collateral or within ten days thereafter. R.S.O. 1970, c. 344, s. 34 (3).

Idem,
purchase-
money
security
interests,
other than
inventory

35.—(1) If no other provision of this Act is applicable, priority between security interests in the same collateral shall be determined,

Priorities,
general rule

- (a) by the order of registration, if the security interests have been perfected by registration;
- (b) by the order of perfection, unless the security interests have been perfected by registration; or
- (c) by the order of attachment under subsection 12 (1), if no security interest has been perfected.

(2) For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration. R.S.O. 1970, c. 344, s. 35.

Idem

36.—(1) Subject to subsection (3) of this section and notwithstanding subsection 34 (3), a security interest that attached to goods before they became fixtures has priority as to the goods over the claim of any person who has an interest in the real property.

Priority
of security
interests,
fixtures

Idem

(2) Subject to subsection (3), a security interest that attached to goods after they became fixtures has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest attached to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

Exceptions

(3) The security interest referred to in subsections (1) and (2) are subordinate to the interest of,

- (a) a subsequent purchaser or mortgagee for value of an interest in the real property;
- (b) a creditor with a lien on the real property subsequently obtained as a result of judicial process; or
- (c) a creditor with a prior encumbrance of record on the real property in respect of subsequent advances,

if the subsequent purchase or mortgage was made or the lien was obtained or the subsequent advance under the prior encumbrance was made or contracted for, as the case may be, without actual notice of the security interest.

Removal of collateral

(4) If a secured party, by virtue of subsection (1) or (2) and subsection (3), has priority over the claim of a person having an interest in the real property, he may on default, subject to the provisions of this Act respecting default, remove his collateral from the real property if, unless otherwise agreed, he reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury excluding diminution in the value of the real property caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

Retention of collateral

(5) A person having an interest in real property that is subordinate to a security interest by virtue of subsection (1) or (2) and subsection (3) may, before the collateral has been removed from the real property by the secured party in accordance with subsection (4), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim. R.S.O. 1970, c. 344, s. 36.

37.—(1) Subject to subsection (2) and to section 38 and ^{Accessions} notwithstanding subsection 34 (3),

- (a) a security interest in an accession that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole; and
- (b) a security interest in goods that attached after the goods became an accession has priority over the claim of any person who subsequently acquired an interest in the whole, but not against a person who had an interest in the whole at the date of attachment of the security interest in the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(2) A security interest referred to in subsection (1) is subordinate ^{Exceptions} to the interest of,

- (a) a subsequent purchaser for value of an interest in the whole; or
- (b) a creditor with a lien on the whole, subsequently obtained as a result of judicial process; or
- (c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances,

if the subsequent purchase was made, the lien was obtained or the subsequent advance under the prior perfected security interest was made or contracted for without notice of the security interest.

(3) If a secured party, by virtue of subsections (1) and (2), has an interest in an accession that has priority over the claim of any person having an interest in the whole, he may, on default, subject to the provisions of this Act respecting default, remove his collateral from the whole if, unless otherwise agreed, he reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection. ^{Removal of collateral}

Retention of
collateral

(4) A person having a security interest in the whole that is subordinate to a security interest by virtue of subsections (1) and (2) may, before the collateral has been removed by the secured party in accordance with subsection (3), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim. R.S.O. 1970, c. 344, s. 37.

Commingled
goods

38. A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interest rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. R.S.O. 1970, c. 344, s. 38.

Priority
subject to
sub-
ordination

39. A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest. R.S.O. 1970, c. 344, s. 39.

Account
debtors

40.—(1) Unless an account debtor has made an enforceable agreement not to assert defences or claims arising out of a sale as provided by section 16, the rights of an assignee are subject to,

- (a) all the terms of the contract between the account debtor and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the account debtor against the assignor that accrued before the account debtor received notice of the assignment.

Idem

(2) The account debtor may pay the assignor until the account debtor receives notice, reasonably identifiable with the relevant rights, that the account has been assigned, and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if he does not do so, the account debtor may pay the assignor. R.S.O. 1970, c. 344, s. 40.

PART IV

REGISTRATION

Registration
system

41.—(1) A registration system, including a central office and branch offices, shall be established for the purposes of this Act.

(2) The central office of the registration system shall be ^{Central office} located at or near the City of Toronto.

(3) Branch offices of the registration system shall be estab- ^{Branch offices} lished at such places as are designated by the regulations.
R.S.O. 1970, c. 344, s. 41.

42.—(1) There shall be a registrar of personal property ^{Registrar, appointment} security and a branch registrar for each branch office.
R.S.O. 1970, c. 344, s. 42 (1).

(2) It shall be the function of the registrar, under the ^{function} direction of the Director of Land Registration appointed under the *Registry Act*, to supervise the operation of the registration system established for the purposes of this Act. ^{R.S.O. 1980, c. 445}
R.S.O. 1970, c. 344, s. 42 (2); 1972, c. 1, s. 52.

(3) The registrar and each branch registrar shall have a ^{seal of office} seal of office in such form as the Lieutenant Governor in Council approves. R.S.O. 1970, c. 344, s. 42 (3).

43. The registrar and each branch registrar may designate ^{Signing officers} one or more persons on the staff of his office to act on his behalf. R.S.O. 1970, c. 344, s. 43.

44.—(1) Upon the request of any person for a search of ^{Certificate of registrar} the individual debtor index, business debtor index or motor vehicle serial number index and upon payment of the prescribed fee, the registrar shall,

(a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing statement or financing change statement the registration of which is still effective in which the person named or the motor vehicle serial number shown in the certificate is shown in the designated place on the financing statement or financing change statement as a debtor or as a serial number, as the case may be, and, if there is, the registration number of it and any other related information recorded in the central file of the registration system; or

(b) furnish a certified copy of a registered financing statement or a registered financing change statement. 1977, c. 23, s. 1 (1).

(2) A certificate issued under clause (1) (a) is *prima facie* evi- ^{Proof of certificates} dence of the contents thereof. R.S.O. 1970, c. 344, s. 44 (2).

Proof of
certified
copies

(3) A certified copy furnished under clause (1) (b) is *prima facie* evidence of the contents of the document so certified. R.S.O. 1970, c. 344, s. 44 (3); 1977, c. 23, s. 1 (2).

Assurance
Fund

45.—(1) There shall be an account in the Consolidated Revenue Fund to be known as "The Personal Property Security Assurance Fund", referred to in this section as "the Fund", into which shall be paid the prescribed portion of the fees received under this Act.

Interest

(2) Interest shall be credited to the Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Fund at the end of the previous calendar year.

Persons
suffering
damage to
be com-
pensated

(3) Any person who suffers loss or damage as a result of his reliance upon a certificate of the registrar issued under section 44 that is incorrect because of an error or omission in the operation of the system of registration, recording, and production of information under this Part, is entitled to have compensation paid to him out of the Fund so far as the Fund is sufficient for that purpose, having regard to any other charges thereon, if he makes a claim therefor under subsection (4) within one year from the time of his having suffered the loss or damage.

Claim
for com-
pensation

(4) A person claiming to be entitled to payment of compensation out of the Fund shall make application therefor in writing to the registrar, setting out therein his full name and address and the particulars of his claim.

Reference
to Master

(5) The registrar shall refer the application to a Master of the Supreme Court who shall issue such directions as he thinks proper, hold a hearing, determine the claimant's entitlement to compensation, the amount thereof, and, if awarded, the costs of the proceedings.

Master's
certificate

(6) The Master shall make his findings and embody his conclusions in the form of a certificate and send by registered mail one copy thereof to the claimant at the address shown in the application and one copy to the registrar.

Confirma-
tion of
certificate

(7) The certificate of the Master shall be deemed to be confirmed at the expiration of thirty days from the date of mailing it to the claimant, unless notice of appeal is served within that time.

Appeal

(8) The claimant or the registrar may appeal to the Divisional Court at any time before the certificate of the Master is confirmed,

and the procedure thereon shall be in accordance with the rules of court.

(9) When the registrar receives a certificate of the Master under subsection (6) and the time for any appeal has expired or, where an appeal is taken, it is disposed of, and it is finally determined that the claimant is entitled to payment of compensation out of the Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay such sum to the claimant out of the Fund. R.S.O. 1970, c. 344, s. 45. Payment out of Fund

46. A financing statement or financing change statement to be registered under this Act may be tendered for registration, Place of registration and effective time of registration

(a) by personal delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations,

and the registration is effective from the time assigned to the registration by the registrar or branch registrar. 1973, c. 102, s. 9, *part*.

47.—(1) In order to register under this Act for the purpose of perfecting a security interest that is created in or provided for in a security agreement, a financing statement in the prescribed form shall be registered. Registration of financing statement

(2) Where the collateral is goods to be held for sale or lease, a financing statement in the prescribed form may be registered before a security agreement is signed for the purpose of perfecting a security interest in such goods. Before security agreement signed

(3) The financing statement referred to in subsection (1) shall not be registered before the execution of the security agreement or after thirty days from the date of the execution of the security agreement. Time for registration

(4) Subject to section 64, a financing statement that is not registered in accordance with the provisions of subsection (3) does not constitute notice or perfection under subsection 53 (1). Failure to register

(5) An error of a clerical nature or in an immaterial or non-essential part of a financing statement or financing change statement that has not misled does not invalidate the registration or destroy the effect of the registration. 1973, c. 102, s. 9, *part*. Errors

48.—(1) Where a security interest is perfected by registration and the secured party has assigned his interest, a Assignments

financing change statement in the prescribed form may be registered.

Idem

(2) Where a security interest has not been perfected by registration and the secured party has assigned his interest, a financing statement in the prescribed form may be registered in which the assignee is shown as the secured party.

Idem

(3) Upon the registration of the financing change statement under subsection (1) or the financing statement under subsection (2), the assignee becomes the secured party of record. 1973, c. 102, s. 9, *part*.

Transfer of collateral

49.—(1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party transfers his interest in the collateral, the transferee becomes a debtor and the security interest becomes unperfected and the registration ceases to constitute notice unless the secured party registers a financing change statement in the prescribed form within fifteen days of the time he consents to the transfer.

Idem

(2) Where a security interest has been perfected by registration and the secured party learns that,

(a) the debtor has transferred his interest in the collateral;
or

(b) the debtor has changed his name,

the security interest becomes unperfected and the registration ceases to constitute notice fifteen days after the secured party learns of,

(c) the transfer and the name of the transferee; or

(d) the change of name and the new name of the transferee,

as the case may be, unless he registers a financing change statement in the prescribed form within such fifteen days.

Financing change statement

(3) A security interest that becomes unperfected under subsection (1) or (2) may thereafter be perfected by registering a financing change statement in the prescribed form at any time during the remainder of the unexpired registration period. 1973, c. 102, s. 9, *part*.

Amendments

50. Where a security interest is perfected by registration, and,

(a) the security agreement to which it relates is amended;

- (b) the name or address of the secured party or debtor is changed; or
- (c) an error or omission of a clerical nature was made in the preparation of the financing statement or financing change statement that is registered in respect of the security interest,

a financing change statement in the prescribed form may be registered at any time during the period that the registration is effective. 1973, c. 102, s. 9, *part*.

51. Where a secured party of record has subordinated his interest to the interest of another person, a financing change statement in the prescribed form may be registered at any time during the period that the registration of the subordinated interest is effective. 1973, c. 102, s. 9, *part*. Subordina-
tion

52. Where a security interest has been perfected by registration, the registration may be renewed, Renewal

- (a) before the expiration of the registration period, by the registration of a financing change statement in the prescribed form; or
- (b) notwithstanding subsection 47 (3), after the expiration of the registration period, by the registration of a financing statement in the prescribed form. 1973, c. 102, s. 9, *part*.

53.—(1) Where the collateral is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act of, Effect of
registration

- (a) a financing statement constitutes,
 - (i) notice of the security interest to which it relates to all persons claiming any interest in such collateral, and
 - (ii) subject to section 21, perfection of the security interest,

during the period of three years following such registration;

- (b) a financing change statement under clause 52 (a) extends the effect of the registration of the financing statement to which it relates during the period of three years following the registration of the financing change statement;

- (c) a financing statement under clause 52 (b) extends the effect of the registration of the original financing statement during the period of three years following the registration of the financing statement under clause 52 (b), but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;
- (d) a financing change statement under subsection 49 (3) extends the effect of the registration of the financing statement to which it relates for the remainder of the unexpired registration period, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;
- (e) any other financing change statement constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the financing statement is effective.

Three
year
period

(2) For the purposes of this section, the period of three years in respect of the registration of a financing statement or a financing change statement is a period of time commencing with the time assigned to the registration of the statement by the registrar or branch registrar and ending with the expiry of the third anniversary of the date of the registration. 1973, c. 102, s. 9, *part*.

Fixtures

54.—(1) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a notice in the prescribed form may be registered in the proper land registry office.

Discharge
of notice

(2) A notice registered under subsection 1 may be discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office.

Effect of
registration

(3) The registration of the notice under subsection (1) shall, for the purposes of subsection 36 (3), constitute actual notice of the security interest. 1973, c. 102, s. 9, *part*.

55.—(1) Where a security interest is perfected by registration and the collateral or proceeds, as the case requires, is released or partially released, the registration may be discharged or partially discharged by the registration of a financing change statement in the prescribed form. Discharge or partial discharge of registration

(2) The financing change statement referred to in subsection (1) shall not be registered unless financing change statements in respect of all assignments by the secured party or transfers by the debtor are registered. Idem

(3) Where a financing statement is registered under this Act, and, Demand

- (a) all the obligations under the security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by the security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written demand to the secured party, either personally or by registered mail, demanding a financing change statement referred to in subsection (1) and the secured party shall sign and deliver personally or by registered mail to the person demanding it at the place set out in the demand the financing change statement together with financing change statements in respect of all assignments by the secured party of the security interest or transfers by the debtor of his interest in the collateral in respect of which financing change statements have not been registered.

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statements required under subsection (3) within ten days after receipt of a demand therefor, he shall pay \$100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction. Failure to deliver

(5) Upon application to the county or district court by originating notice to all persons concerned or to such persons as the judge may determine, the judge may, Security or payment into court

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement; or

- (b) order upon any ground he considers proper that the registrar amend the recorded information to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be. 1973, c. 102, s. 9, *part.*

PART V

DEFAULT—RIGHTS AND REMEDIES

Rights and
remedies
cumulative

56.—(1) The rights and remedies referred to in this Part are cumulative.

Secured
party's
rights and
remedies

(2) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies, the rights and remedies provided in the security agreement except as limited by subsection (5), the rights and remedies provided in this Part and, when in possession, the rights, remedies and duties provided in section 19.

Secured
party's
remedies

(3) The secured party may enforce the security interest by any method available in or permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is available with respect to the documents of title is also available, with necessary modifications, with respect to the goods covered thereby.

Debtor's
rights and
remedies

(4) Where the debtor is in default under a security agreement, he has, in addition to the rights and remedies provided in the security agreement and any other rights and remedies, the rights and remedies provided in this Part and in section 19.

Waiver and
variation
of rights
and duties

(5) Except as provided in sections 61 and 62, the provisions of subsections 59 (3), (4) and (5) and of sections 60, 61, 62 and 63, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied, but the parties may by agreement determine the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as such standards are not manifestly unreasonable having regard to the nature of such rights and duties.

Where
agreement
covers both
real and
personal
property

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case this Part does not apply.

(7) A security interest does not merge merely because a secured party has reduced his claim to judgment. R.S.O. 1970, c. 344, s. 55. No merger in judgment

57.—(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled, Collection rights of secured party

(a) to notify any account debtor or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral; and

(b) to take control of any proceeds to which he is entitled under section 27.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors on instruments shall proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. R.S.O. 1970, c. 344, s. 56. Idem

58. Upon default under a security agreement,

(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law; Secured party's right to take possession upon default

(b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and

(c) the secured party may dispose of collateral under section 59 on the debtor's premises. R.S.O. 1970, c. 344, s. 57.

59.—(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to, Secured party's right to dispose of collateral upon default

(a) the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the collateral and, to the extent pro-

vided for in the security agreement and not prohibited by law, any other reasonable expenses incurred by the secured party;

- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition; and
- (c) the satisfaction of the obligation secured by any subordinate security interest in the collateral if written demand therefor is received by the party making the disposition before the distribution of the proceeds is completed.

Request for
proof of
interest

(2) Where a written demand under clause (1) (c) is received by the secured party, he may request the holder of the subordinate security interest to furnish him with reasonable proof of such holder's interest, and, unless such holder furnishes such proof within a reasonable time, the secured party need not comply with such demand.

Methods of
disposition

(3) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (5), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.

Secured
party's
right to
delay dis-
position of
collateral

(4) The secured party may, subject to subsection 61 (1), retain the collateral in whole or in part for such period of time as is commercially reasonable. R.S.O. 1970, c. 344, s. 58 (1-4).

Notice to
be given
by secured
party

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral that is perfected by registration against the name of the debtor and to any other person who is known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing,

- (a) a brief description of the collateral;
- (b) the amount required to satisfy the obligation secured by his security interest;
- (c) the amount of the applicable expenses referred to in clause (1) (a) or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;

(d) a statement that upon payment of the amounts due the debtor may redeem the collateral;

(e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and

(f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made. 1973, c. 102, s. 10.

(6) The notice required by subsection (5) shall be served personally upon or left at the residence or last known place of abode of the party to be served or may be sent by registered mail to his last known post office address.

Service of
notice

(7) The secured party may purchase the collateral or any part thereof only at a public sale.

Secured
party's
right to
purchase
collateral

(8) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if such disposition is made to a *bona fide* purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

Effect of
disposition
of collateral

(9) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then,

Idem

(a) in the case of a public sale, if the purchaser has no knowledge of any defect in the sale and if he does not purchase in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(10) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. R.S.O. 1970, c. 344, s. 58 (6-10).

Certain
transfers of
collateral

Surplus

60. Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, he shall account for any surplus to any person, other than the debtor, whom the secured party knows to be the owner of the collateral, and, in the absence of such knowledge, he shall account to the debtor for any surplus. R.S.O. 1970, c. 344, s. 59.

Compulsory disposition of collateral, consumer goods

61.—(1) Where the security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying his rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 59, and, if he fails to do so, the debtor may proceed under section 63, or in an action for damages or loss sustained. R.S.O. 1970, c. 344, s. 60 (1).

Retention of collateral

(2) In any case other than that mentioned in subsection (1), a secured party in possession of the collateral may, after default, propose to retain the collateral in satisfaction of the obligation secured, and notification of such proposal shall be given to the debtor and to any other person whom such secured party knows to be the owner of the collateral and, except in the case of consumer goods, to any other person who has a security interest in the collateral and who has registered a financing statement in the prescribed form under this Act indexed in the name of the debtor or who is known by the secured party in possession to have a security interest in the collateral. R.S.O. 1970, c. 344, s. 60 (2); 1973, c. 102, s. 11.

Idem

(3) If any person entitled to notification under subsection (2) objects in writing within fifteen days after being notified, the secured party in possession shall dispose of the collateral under section 59, and, in the absence of any such objection, such secured party shall, at the expiration of such period of fifteen days, be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation secured, and thereafter is entitled to hold or dispose of the collateral free of all rights and interests therein of any person entitled to notification under subsection (2) who was given such notification. R.S.O. 1970, c. 344, s. 60 (3).

Redemption of collateral

62. At any time before the secured party has disposed of the collateral by sale or exchange or contracted for such disposition under section 59 or before the secured party shall be deemed to have irrevocably elected to retain the collateral

in satisfaction of the obligation under subsection 61 (2), the debtor, or any person other than the debtor who is the owner of the collateral, or any secured party other than the secured party in possession, may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses of retaking, holding, repairing, processing, preparing the collateral for disposition and in arranging for its disposition, and, to the extent provided for in the security agreement, the reasonable solicitor's costs and legal expenses. R.S.O. 1970, c. 344, s. 61.

63.—(1) Where a secured party in possession of collateral is not complying with any of the obligations imposed by section 19 or, after default, is not proceeding in accordance with this Part or the account is disputed, the debtor or any person who is the owner of the collateral or the creditors of either of them or any person other than such secured party who has an interest in the collateral may apply to the Supreme Court or to a county or district court having jurisdiction with respect thereto, and the court may, upon hearing any such application, direct that the secured party comply with the obligations imposed by section 19, or that the collateral be or be not disposed of, or order an account to be taken or make such other or further order as the court considers just.

Remedies
for failure
of secured
party to
comply with
this Part

(2) If the disposition of the collateral has been made otherwise than in accordance with this Part, ^{Idem}

- (a) the debtor or any other person entitled to notice under subsection 59 (5) or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss or damage caused by his failure to comply with this Part; and
- (b) where the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 per cent of the principal amount of the debt or the time price differential plus 10 per cent of the cash price.

(3) Where an application under subsection (1) is made to a county or district court, a respondent may, by notice served on the applicant and on the other respondents, if any, and filed with proof of service thereof with the clerk of the county or district court not later than the two days preceding the day of the return of the application, require the proceedings to be removed into the Supreme Court.

Removal of
proceedings
into
Supreme
Court

**Transmission
of
proceedings**

(4) Upon the filing of the notice and proof of service thereof, the clerk of the county or district court shall forthwith transmit the papers and proceedings to the proper office of the Supreme Court in the county or district in which the application is made.

**Removal of
proceedings**

(5) When the papers and proceedings are received at the proper office of the Supreme Court, the proceedings are *ipso facto* removed into the Supreme Court.

**Reference
to master**

(6) Where an application under subsection (1) is made to or is removed into the Supreme Court, the court may refer any question to a master or other officer for inquiry and report.

Appeal

(7) An appeal lies to the Divisional Court from any order made under this section. R.S.O. 1970, c. 344, s. 62.

PART VI

MISCELLANEOUS

**Extension
of time**

64. Where in this Act any time is prescribed within which or before which any act or thing must be done, a judge on application may, upon such terms and conditions and with such notice, if any, as he may order, extend such time for compliance upon being satisfied that no interest of any other person will be prejudiced by such extension, but, in the event that it later appears that any such act or thing done within the period so extended has prejudiced the rights that any person acquired before the doing of such act or thing, such act or thing shall be presumed not to have been done in conformity with this Act for the purpose of obtaining the right that such person acquired before the doing of such act or thing. R.S.O. 1970, c. 344, s. 63 (1).

**Application
of Act**

65.—(1) Except as otherwise provided herein, this Act applies only to a security agreement made on or after the 1st day of April, 1976, and does not apply to a security agreement made before that day.

**Application
re prior un-
registered
security
R.S.O. 1970,
cc. 33, 45, 76**

(2) Subject to section 66, a security agreement made before the 1st day of April, 1976, that required a registration in order to comply with *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act* continues to have such force and effect as if those Acts had not been repealed if a financing statement was registered pursuant to this Act within

ninety days after the execution of the security agreement, and section 64 applies, with necessary modifications, in respect of any extension of such time. 1976, c. 39, s. 1.

66.—(1) Where a security interest was covered by an unexpired filing or registration under *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, and in respect of which a financing statement was filed before the 1st day of April, 1976,

Transitional
provision
R.S.O. 1970,
cc. 33, 45, 76

- (a) the financing statement and any filed financing change statement relating thereto shall be deemed to be registered; and
- (b) the security interest to which the financing statement relates shall be deemed to be perfected,

under this Act and, subject to this Act, the effect of the prior filing or registration is continued for the unexpired portion of the filing or registration period.

(2) Upon the request of any person and upon payment of the prescribed fee, any chattel mortgage registered under *The Bills of Sale and Chattel Mortgages Act*, any contract registered under *The Conditional Sales Act* or any assignment of book debts registered under *The Assignment of Book Debts Act* shall, subject to section 68, be provided for inspection.

Inspection
of
documents

67. Unless otherwise provided by this Act or the regulations, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. R.S.O. 1970, c. 344, s. 66.

Rules of
practice

68.—(1) Where,

Destruction
of
documents

- (a) books, documents, records or papers have been preserved for the purposes of this Act; or
- (b) chattel mortgages, conditional sale contracts or assignments of book debts registered under *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act* have been preserved.

for so long that it appears they need not be preserved any longer, the Director of Land Registration appointed under the *Registry Act* may authorize their destruction.

R.S.O. 1980,
c. 445

Removal
from
registration
system

(2) The registrar may remove from the registration system information related to a financing statement or financing change statement that is no longer effective. 1973, c. 102, s. 14.

Conflict

R.S.O. 1980,
c. 87

69. Where there is conflict between a provision of this Act and a provision of the *Consumer Protection Act*, the provision of the *Consumer Protection Act* prevails and, where there is conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1970, c. 344, s. 68.

Regulations

70. The Lieutenant Governor in council may make regulations,

- (a) designating branch offices;
- (b) approving the form of the seal of the registrar and each branch registrar;
- (c) prescribing the duties of the registrar and branch registrars;
- (d) prescribing business hours for the offices of the registration system or any of them;
- (e) respecting the registration system;
- (f) requiring the payment of fees and prescribing the amounts thereof;
- (g) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;
- (h) governing practice and procedure applicable to proceedings under this Act;
- (i) prescribing forms, the information to be contained in forms, the manner of recording the information and the persons who shall sign forms;
- (j) requiring that the forms to be used shall be those provided or approved by the registrar;
- (k) governing the time assigned to the registration of financing statements and financing change statements;
- (l) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing

change statement or in the recording or production of information by the registrar;

- (m) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (n) providing for the approval by the registrar of the forms to be used for the purposes of this Act, and for the withdrawal by the registrar of any such approval;
- (o) prescribing the particulars referred to in section 46;
- (p) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

R.S.O. 1970, c. 344, s. 70; 1973, c. 102, s. 15.

